

UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
CALIFORNIA STATE OFFICE

DECISION RECORD

For

THE INDIAN PASS WITHDRAWAL  
IMPERIAL COUNTY, CALIFORNIA

Prepared by:

United States Department of the Interior  
Bureau of Land Management  
California Desert District  
El Centro Field Office

**DECISION RECORD  
and  
FINDING OF NO SIGNIFICANT IMPACT  
for  
Environmental Assessment CA-670-EA2000-34  
The Indian Pass Withdrawal, Imperial County, CA  
CACA-38953**

**1. RECOMMENDATION**

This Decision Record documents the recommendation and supporting rationale of the Bureau of Land Management (BLM) to withdraw approximately 9,360 acres of public lands in the Indian Pass area from the public land laws, including the mining laws, for a period of 20 years. The purpose of the withdrawal is to protect sensitive and significant Native American values, cultural and archaeological resources, and the visual quality of public lands in the Indian Pass area of the California Desert Conservation Area (CDCA), Imperial County, California.

Based on the analysis of potential environmental impacts contained in the Indian Pass Withdrawal Environmental Assessment (EA), BLM has determined that the environmental impacts of the proposed action are not expected to be significant and an environmental impact statement is not required. A Finding of No Significant Impact (FONSI) is included with this Decision Record.

**2. BACKGROUND**

The General Mining Law of 1872 is the basis for appropriation of hardrock mineral resources from public lands. According to the Mining Law, all public lands that are not specifically withdrawn from mineral entry are open and available for mining claim location, exploration, and development. A mineral withdrawal is a tool available to land management agencies to withhold lands from the location of mining claims in order to protect other sensitive resource values in an area.

The petition to pursue the Indian Pass Withdrawal was approved by the Secretary of the Interior on October 26, 1998. The "Notice of Proposed Withdrawal" was published in the Federal Register on November 2, 1998. Upon publication the lands were temporarily segregated for a two-year period to allow BLM to prepare the Environmental Assessment for the proposed Indian Pass Withdrawal.

The authority to withdraw lands from mineral entry lies with the Department of the Interior. The Secretary of the Interior, as defined in 43 CFR 2300.0-5(a), decides whether to approve a withdrawal, and for how long. The Secretary is limited to a maximum withdrawal period of 20 years for withdrawal of 5,000 or more acres in the aggregate. If a withdrawal of more than 5,000 acres is approved, the Secretary of the Interior must advise Congress of the withdrawal action being taken. No action is required by Congress to implement a mineral withdrawal. At the end of the 20-year period, the withdrawal decision is to be reviewed to determine if it is appropriate to extend it.

The withdrawal does not affect any rights which may be associated with unpatented mining claims. Development of these claims would be subject to Federal surface management regulations and other applicable State and Federal laws.

If approved by the Secretary of Interior, the recommended Indian Pass Withdrawal will close the public lands from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights. By regulation a withdrawal does not apply to private property, nor does it affect any rights which may be associated with unpatented mining claims. The proposed withdrawal will not affect fluid leaseable minerals (e.g., oil, gas, geothermal), saleable minerals (e.g., sand and gravel), rights-of-way, or recreational use of the area. However, these discretionary activities in the withdrawal area would be managed in accordance with Multiple Use Class L (Limited Use) guidelines of the CDCA Plan which require that "sensitive values are not diminished."

The withdrawal boundaries contain approximately 6,000 acres of mining claims held by Glamis Imperial Corporation (Glamis), including their currently proposed Imperial Project. As stated earlier, the withdrawal would not affect valid existing rights, however, BLM has not made a determination with respect to the validity of the Glamis claims. The withdrawal decision and any decisions relating to Glamis' proposed Imperial Project are separate and distinct.

### **3.0 Alternatives Considered**

#### **3.1 No Action Alternative**

"No Action" was the only alternative considered in the EA. Under this alternative no action would be taken by the Secretary of the Interior to withdraw the area from mineral location and entry. It would continue the Federal minerals management that existed prior to November 2, 1998, when the area was closed to location of new mining claims for the two-year study period. Under this alternative Federal lands in the Indian Pass area would remain available for mineral location, exploration, and development under the General Mining Law of 1872.

The Imperial Project is the only mining project proposed within the Indian Pass area at present. However, potential future development could involve some or all of the claims within and outside of the currently proposed Imperial Project area. Any new project proposals would be processed under applicable regulations and laws.

#### **3.2 Alternatives Considered but Rejected**

##### **Reduced or Increased Acreage**

The withdrawal boundary was determined by BLM to be the minimum area necessary to protect the cultural values within this area, based on consultations with representatives of the Quechan Tribal Council and the Quechan Cultural Heritage Committee, and reviews of all available cultural resource inventories.

While BLM recognizes that the Indian Pass area is only a portion of the larger Quechan traditional culture area, the special concern for the vicinity of the proposed Imperial Project is the focus of the proposed action. The need for withdrawal beyond this area has not been identified. BLM will manage and protect other areas of sensitive resource values through existing regulations, policies, and planning designations as determined necessary.

##### **Cooperative Agreement or Right-of-Way**

Neither a cooperative agreement nor right-of-way could adequately insulate the land from a possessory use such as mining, which may jeopardize the continued integrity of the archaeological and cultural resources and result in an irrevocable loss of significant Native American religious sites.

#### **4. RATIONALE FOR RECOMMENDATION**

The Indian Pass withdrawal is necessary to protect Native American values, cultural resources, and visual quality. As described in the Indian Pass Withdrawal EA and reiterated in public comments and in recommendations of the National Advisory Council on Historic Preservation, the values of this area are both significant and are sensitive to harm from mining.

If the recommended withdrawal is not implemented, future mining activities could occur, subject to approval by the BLM authorized officer in accordance with 43 CFR 3809. Although BLM would likely require strict environmental mitigation in considering any future mining proposal in the Indian Pass area, and has the authority to deny certain proposals under the undue impairment and unnecessary or undue degradation standards, protection of Native American values, cultural and archaeological resources, and visual quality would not be assured. The Quechan have consistently expressed concern that impacts to Native American values in this area from mining cannot be mitigated.

The recommended withdrawal is in conformance with the CDCA plan and is consistent with BLM's legal responsibility to protect the values of the CDCA against undue impairment and unnecessary or undue degradation. The withdrawal would also facilitate BLM compliance with Executive Order 13007 on Sacred Sites.

The following discussion is a summary of the management considerations involved in recommending the withdrawal:

##### **Conformance with the California Desert Conservation Plan**

The proposed withdrawal is in conformance with the CDCA Plan (1980). The CDCA Plan designated public lands in the withdrawal area as Multiple-Use Class L (Limited Use). The Plan states, "Public lands designated as Class L are managed to provide for generally lower-intensity, carefully controlled multiple use of resources, while ensuring that sensitive values are not significantly diminished." Some uses in a given area may be mutually exclusive and require selective decision to be made for that area, particularly in Class L areas, which the Plan states are areas "where judgement is called for in allowing consumptive uses only up to the point that sensitive natural and cultural values might be degraded."

The withdrawal is consistent with the CDCA Plan Cultural Resource Element and Native American Element. These establish goals of protecting sensitive and significant cultural resources.

The CDCA Plan also designated approximately 2,160 acres in the withdrawal area as the Indian Pass ACEC in recognition of significant petroglyph sites consisting of etched stones. These sites are extremely rare and are related to Quechan spiritual beliefs. The ACEC Management Plan closed some of the vehicle routes in the area and prohibited rock collection within the ACEC.

##### **Protection Area of Traditional Cultural Concern (ATCC)**

The Quechan Indian Tribe has consistently stated its strong cultural and religious concerns regarding this area. The Indian Pass-Running Man area of traditional cultural concern (ATCC) was identified as a result of the intensive archaeological surveys and the Native American consultation for the proposed Imperial Project. The ATCC has been evaluated as eligible for the National Register of Historic Places in accordance with Department of Interior guidelines. It is associated with important events in Quechan history; it embodies distinctive characteristics of Quechan religious structures and/or built objects, such as geoglyphs, petroglyphs, and cleared circles; and its various components combine to create a unique and distinguishable entity that is held in very high regard by the Quechan Tribe. Also within the ATCC are numerous archaeological sites that are also of scientific, prehistoric, or historic value in their own right. The entire ATCC was evaluated as a district as defined in the National Register Bulletin No. 15. The ATCC contains a concentration of linked sites and objects comprising of a culturally significant entity.

The boundaries of the ATCC, which coincide with the recommended withdrawal boundaries, are based on the distribution of Native American trails linking this area to other areas of traditional cultural value, and on a high concentration of evidence of Native American religious practices, including geoglyphs, petroglyphs, cleared circles, ceramic scatters, rock features, broken quartz concentrations, and flaking stations. The ATCC is archaeologically significant and retains critical religious, cultural and educational importance to the Colorado River Indian Tribes, especially the Quechan Tribe. The Quechan have stated the trails served to connect all major religious sites into a single complex through which they can trace their history as a people. Sixteen trails and trail segments have been recorded within the ATCC, including the Trail of Dreams. The Trail of Dreams links up the two most important places in Quechan Indian religious mythology and religious belief, Spirt Mountain (Avikwaame), near Needles, California, and Pilot Knob (Avikwial), located in California, west of Yuma, Arizona. This trail is believed to be of critical importance to dreamers in navigating through the spiritual world. The Quechan believe that a person can learn his history and his destiny through dreaming and that dreams can help solve practical problems in life. Avikwaame, according to tradition, is where the Creator first emerged and all Yuman peoples originated. The Quechan say that political and religious leaders can visit Avikwaame in their dreams and in doing so they travel along the Trail of Dreams through the ATCC.

The Trail of Dreams is important to the Quechan as a travel corridor from Avikwial to Avikwaame. This would include both physical travel and spiritual travel through dreams. The Quechan believe that future mineral development could cut off travel along the Trail of Dreams. This is an especially strong concern because they believe the Trail of Dreams may be the last remaining route from Avikwial to Avikwaame.

Additional mining activities in the Indian Pass area could further affect the integrity of the Indian Pass-Running Man ATCC and the associated archaeological and cultural resources. Any loss of these resources would result in an irreversible and irrevocable loss of significant Native American values, cultural resources, and visual quality.

### **Concerns of Advisory Council Addressed**

The withdrawal addresses the findings and recommendations of the Advisory Council on Historic Preservation (the Council). The Council is the major policy advisor to the government in the field of historic preservation. The Council concluded in a report concerning the cultural values of the Indian Pass ATCC, that protection of the ATCC is critical to sustaining the Quechan Tribe's traditional practices; that mining would unduly degrade the ATCC; and that no available mitigation measures were adequate to compensate for the loss of these cultural values. While the Council report focused on the Imperial project, the Council noted that the affected Native American and cultural resource values extend beyond the Imperial Project boundaries.

## **Compliance with Executive Order on Sacred Sites, E.O.13007**

The withdrawal would facilitate BLM compliance with the Executive Order on Sacred Sites of May 24, 1996, which mandates that federal land managers,

“to the extent practicable, permitted by law, and not clearly inconsistent with essential agency functions, (1) accommodate access to and ceremonial use of Indian sacred sites by Indian religious practitioners and (2) avoid adversely affecting the physical integrity of such sacred sites.”

The withdrawal would accommodate access by Native Americans while protecting the integrity of sacred sites in the Indian Pass Area.

## **Visual Quality Maintained**

Protection of the existing visual quality from future mining impacts would not be assured without the withdrawal. The visual quality of the landscape comprising the Indian Pass withdrawal area is relatively undisturbed, with only a few roads and trails of minor disturbance from the historic mining and ongoing mineral exploration activities. The area is designated VRM II (retain existing visual character of the landscape) in accordance with the CDCA plan. The area is also recognized in the CDCA plan as having a high potential for the occurrence of valuable locatable minerals. If future heap leach gold operations, in particular, are developed, the visual quality of the area would be significantly degraded through the excavation of the open pits and the creation of the waste rock stockpiles and heap.

## **Cumulative Impacts Avoided**

The withdrawal would avoid cumulative impacts from mining that might occur without the withdrawal and which have the potential for causing significant harm to Native American values, archaeological and cultural resources, and visual quality. The withdrawal would prevent cumulative impacts from exploration or other mining activities that might otherwise be permitted under a plan of operations (3809.1-4). It would also prevent cumulative impacts from authorized mining actions that are undertaken but not completed due to unfavorable exploration results, denial of a subsequent plan of operations by BLM, or for business reasons of the mining proponent.

The recommended withdrawal would add to existing closures of public lands to mining in the adjacent Indian Pass (33,855 acres) and Picacho Peak (7,700 acres) Wilderness Areas. The cumulative impact of these closures is not considered significant because all of these withdrawals are subject to valid existing rights, and the majority of public lands in this region would remain open to the location and potential development of mining claims.

## **Valid Existing Rights Not Affected**

The withdrawal would have no effect on valid existing rights. However, BLM has not made a determination with respect to the validity of any existing claims in the withdrawal area. Glamis holds claims on approximately 6,000 acres within the withdrawal area. Glamis also holds other claims in the vicinity of, but outside, the withdrawal area.

## **Withdrawal is Consistent with BLM's Legal Responsibilities**

FLPMA Section 601, 43 U.S.C. 1781 requires BLM to take “reasonable measures to protect the scenic, scientific, and environmental values of the public lands of the California Desert Conservation Area (CDCA) against undue impairment. . . .” BLM is also required under FLPMA Section 302(b) to prevent unnecessary or undue degradation of the public lands. The relevant values in the Indian Pass withdrawal area, including Native American values, cultural and archaeological resources, and visual quality, were discussed in detail in the EA.

By law, a level of “impairment” and “degradation” could result from activities authorized by BLM as long as undue impairment and unnecessary or undue degradation do not occur. However, the significance and sensitivity of the resource values in the Indian Pass area substantially limit the options available to the BLM authorized officer. The likelihood of cumulative impacts further increases the risk of undue impairment and unnecessary or undue degradation

## **5. PUBLIC INVOLVEMENT**

Public involvement throughout the withdrawal process included publication of notices in the Federal Register, news releases to area newspapers, a public meeting, consultations with Quechan Tribe, and briefings to other interested parties, local, Federal and state officials. The EA mailing list was compiled from public comment letters and attendees of the public meeting. Approximately 40 copies of the withdrawal EA and a draft FONSI were mailed on May 2, 2000. Notification of the availability of the EA and FONSI were mailed to approximately 65 interested parties. Ultimately, approximately 85 copies of the EA were mailed or provided to interested parties. The EA was also made available for viewing and printing via BLM’s web page on the internet. The comment period concluded on June 5, 2000. BLM accepted written, e-mail, and faxed comments. A summary of comments and responses is attached as Appendix A.

## **6. IMPLEMENTATION OF THE DECISION**

The withdrawal is effective when the Public Land Order, signed by the Assistant Secretary for Land and Minerals Management, is published in the Federal Register.

The decision to approve or deny the recommended withdrawal constitutes the final administrative action of the Secretary of the Interior. It is not subject to administrative review under the applicable regulations of the Department of the Interior.

## FINDING OF NO SIGNIFICANT IMPACT

### Indian Pass Withdrawal Environmental Assessment CA-670-2000-34

I have reviewed the environmental assessment (EA) prepared for the analysis of the Indian Pass Withdrawal. I have determined, based on the analysis in the EA, that this is not an action that would significantly affect the quality of the human environment and, therefore, an Environmental Impact Statement is not required. This determination is based on the rationale that the significance criteria, as defined by the Council on Environmental Quality (40 CFR 1508.27), have not been met.

The Finding of No Significant Impact (FONSI) is based on the following point by point relation of the proposed action to the definition of the word “significantly” found at 40 CFR 1508.27:

(a) Context - The effects of the proposed mineral withdrawal are local. The EA recognizes that mining may provide benefits to the local economies in terms of employment, wages, and government revenues. The withdrawal does not apply to valid existing rights, such as the currently proposed Imperial Project. Nor would it prevent claimants from exercising any rights which may be attached to claims outside of the Imperial Project, subject to the validity of the rights, and compliance with NEPA. The short term effect resulting from the proposed withdrawal is the potential loss of revenue to the local economies. If the Imperial Project is approved, operations would be allowed to proceed. During the life of the Imperial Project (10-20 years) there would be no economic loss to the local region. Since there is no current proposal for the development of the claims outside of the Imperial Project, there is no way to know how much mineral development might be foregone if the withdrawal is approved.

The long term effect of the withdrawal is in the reduction of future mining related impacts to the Indian Pass-Running Man Area of Traditional Cultural Concern (ATCC) which has been evaluated as eligible for the National Register of Historic Places in accordance with DOI guidelines. It is associated with important events in Quechan history; it embodies distinctive characteristics of Quechan religious structures and/or built objects, such as geoglyphs, petroglyphs, and cleared circles; and its various components combine to create a unique and distinguishable entity that is held in very high regard by the Quechan Tribe. Also within the ATCC are numerous archaeological sites that are also of value to the Quechan in their own right. The entire ATCC was evaluated as a district as defined in the National Register Bulletin No. 15. The ATCC contains a concentration of linked sites and objects comprising of a culturally significant entity.

(b) Intensity - the following rationale was used to evaluate the intensity/severity of the impacts associated with the proposed action based on the criteria found in 43 CFR 1508.27:

- Public health and safety - Public health and safety are not affected by the proposed action;
- Controversy - Although a limited number of stakeholders object to the proposed action, the effects on the quality of the human environment are not considered highly controversial. While public debate has existed and will continue to exist around the proposed mineral development, the proposed withdrawal is distinct from that controversy;

- Uncertain or unknown risks - There are no known effects on the human environment that are highly uncertain or involve unique or unknown risks associated with the proposed action;
- Precedent - The proposed action does not set a precedent for future actions. Withdrawals are not unprecedented and are often implemented to limit mineral related activities in order to protect other sensitive resource values in the area;
- Cumulative impact - The withdrawal would prevent cumulative impacts from exploration or other mining activities that may otherwise be permitted under a plan of operations (3809.1-4). It would also prevent cumulative impacts from authorized mining actions that are undertaken but not completed due to unfavorable exploration results, denial of a subsequent plan of operations by BLM, or for business reasons of the mining proponent.

The recommended withdrawal would add to existing closures of public lands to mining in the adjacent Indian Pass (33,855 acres) and Picacho Peak (7,700 acres) Wilderness Areas. The cumulative impact of these closures is not considered significant because all of these withdrawals are subject to valid existing rights, and the majority of public lands in this region would remain open to the location and potential development of mining claims.

- National Register of Historic Places - There will be no adverse effect to districts, sites or objects listed in or eligible for listing in the National Register of Historic Places, or loss or destruction of significant scientific, cultural, or historical resources;
- Threatened & endangered species - There will be no adverse effect to any endangered or threatened species or its habitat that has been determined to be critical under the Endangered Species Act of 1973;
- Federal, State or local laws - The proposed action does not violate Federal, State or local laws or requirements imposed for the protection of the environment.

---

Greg Thomsen, Field Manager  
 El Centro Field Office  
 Bureau of Land Management

---

Date

Legal Description  
Indian Pass Withdrawal

San Bernardino Meridian, Imperial County, California

	<u>Acres ±</u>
T. 13 S., R. 20 E. sec. 25, E½,*	317.50
T. 13 S., R. 21 E. sec. 21, NE¼, E½NW¼, SW¼,*	400.00
sec. 28, NW¼, NW¼SW¼,*	200.00
secs. 29 - 33, inclusive*	2,844.00
T. 14 S., R. 20 E. sec. 1, E½,*	356.50
sec. 11, E½,*	320.00
secs. 12 - 14, inclusive*	2002.00
T. 14 S., R. 21 E. sec. 4, lots 1 and 2 of NW¼, NW¼SW¼;	201.53
sec. 5, lots 1 and 2 of NE¼, lots 1 and 2 of NW¼, S½;	643.74
sec. 6, lots 1 and 2 of NE¼, lots 1 and 2 of NW¼, lots 1 and 2 of SW¼, SE¼;	653.58
sec. 7, lots 1 and 2 of NW¼, lots 1 and 2 of SW¼, E½;	654.28
sec. 8, N½NE¼, W½;	400.00
sec. 17, NW¼NW¼;	40.00
sec. 18, lots 1 and 2 of NW¼, NE¼;	327.61

\* Unsurveyed lands. Acreages protracted.

The lands described aggregate approximately 9,360.74 acres.

## **APPENDIX A**

### **Public Comments to Indian Pass Withdrawal EA and BLM Responses**

## PUBLIC COMMENTS TO THE EA AND BLM RESPONSE

BLM received approximately 130 public comments on the EA. BLM considered all of these comments during the decisionmaking process regarding the Indian Pass Withdrawal.

Many letters expressed general support for the withdrawal or general opposition to mining in the area and did not raise any substantive issues. Other letters expressed concern about various resource, procedural and legal issues. Many of the issues were repeated from letter to letter. Where comments are nearly identical, or contained very similar points on a topic, they have been combined into one comment or a group of comments, that are representative of that topic. The substantive issues raised in the public comments received are summarized below and are followed by BLM's comments to those substantive issues.

### Withdrawal Boundaries and Native American Consultation

Several letters expressed concern about the documentation of the Native American consultation that resulted in the identification of the withdrawal boundaries, and what they perceive to be the lack of public participation in that process.

**Comment(s)** *The proposed action is crafting a wide-ranging public policy that establishes Native American cultural values as predominant over mineral extraction and economic benefits to a local area. The cultural information provided is limited to that provided by the proponents of the proposed withdrawal area either directly to the local BLM office or through other agencies of the DOI which is normally considered adequate for scoping a project proposal, but certainly deficient for purposes of drawing conclusions which may impose great economic harm. The fact that the BLM appears to have negotiated and adopted boundaries and definition of the areas of interest with project proponents without public input or participation by the local Imperial County jurisdiction belies the agency's rush to judgement without due analysis. This closed door process would not occur if the BLM were to perform the open review which NEPA mandates. How does the BLM justify the exclusion of the local jurisdiction?*

*There is no rational basis for BLM to single out these 9,360 acres for withdrawal apart from the purpose to frustrate the Glamis Imperial Project. This is especially true in light of the fact that the Quechan state that these sacred trails extend in all directions to many other lands outside of Indian Pass. What about all the other areas that the Quechan state are of sacred importance, Pilot Knob, Spirit Mtn., Picacho Peak, etc? The 9,360 acres delineated by BLM in the proposed withdrawal do not comport with the alleged sacred site identified by the Tribe. What/where is the documentation for the "they agreed" statement regarding the decided boundaries of the ATCC/Withdrawal? If the project site is in a "portion of a very large TCP," why wasn't this large TCP discussed in the EA?*

**Response:** BLM is not crafting new policy. Withdrawals are not unprecedented. A mineral withdrawal is a tool available to land management agencies to withhold lands from mining to protect other sensitive resource values in the area.

Pursuant to Federal laws and regulations, Federal agencies (including BLM) have a trust responsibility to Native American groups. For BLM, this obligation requires a reasonable and good faith effort to identify

and consider, and to carry out programs in a manner sensitive to and consistent with, Native American concerns and tribal government planning and resource management programs. The identification of Native American cultural values, comments, and concerns can occur only through consultation with tribal governments and practitioners of traditional cultural and religion. It is the policy under BLM's Cultural Resource program that field inventory data are considered privileged and will be released only in agreement with the Indian consultants. The cultural information in this case is tied to one entity - the Quechan Tribe. The Quechan informed BLM about their concerns regarding the area's significance to their cultural and religious values during the EIS process for the proposed Glamis Imperial Project. Through consultation it was determined that there was a need to affect some manner of protection for these lands. This was done under the CDCA Plan, the American Indian Religious Freedom Act, and in compliance with Executive Order 13007.

The ATCC boundaries, which were identified through extensive consultation with the Quechan for the Imperial Project DEIS/EIR, are based on high concentrations of evidence of Native American religious practices, including geoglyphs, broken quartz, broken pots, and cleared circles. The boundaries were further validated through BLM consultation with the Quechan for the withdrawal proposal. The boundaries of the proposed withdrawal correspond with the ATCC boundaries.

It is true that the Quechan have concerns for a series of areas of high traditional cultural significance (TCP) linked by a series of Native American trails. However the special concerns for the vicinity of the Imperial Project are the focus of the Indian Pass Withdrawal. The TCP was not discussed in detail in the EA because only the Indian Pass-Running Man ATCC is proposed for withdrawal. There are no additional areas currently under consideration for withdrawal.

All nonconfidential documentation regarding the archaeological and cultural values and ATCC boundaries is provided in the Imperial Project 1997 DEIS/EIR, which was widely distributed for public review. Additional public participation throughout the withdrawal process included Federal Register publications, news releases to area newspapers, a public meeting, and briefings to interested parties, and local, Federal and state officials. Copies of all notices were sent individually to local government officials and known interested parties.

#### Minerals/Economics

Those who opposed the withdrawal or expressed support for mining in the area commented about the high potential for mineral occurrence, discovery, and development. They also pointed out the economic benefits to the local and State economy and the importance of the jobs that would be provided by mining in the area and the potential loss of revenue to the local economies.

**Comment(s):** *The EA discusses the relationship of the existing mines, and the possible mineral resources in the withdrawal area, yet it fails to address the impacts of a 20-year ban on accessing these possible mineral resources. Where is the economic analysis of the loss of this area to mining or other economical use? How will this economically affect the County of Imperial? In the conclusions and recommendations of the mineral report, it states that the Glamis Project alone is proposed for up to \$20,000,000 in annual operation expenditures, \$3,000,000 in local wages annually and \$3,000,000 in annual capital purchases for the region along with up to 120 jobs and annual local, state and Federal tax benefits of up to \$3,700,000 per year. To imply that the closing of the other 7,960 acres as well would not have a measurable impact while not providing an economic analysis covering the entire 20-year withdrawal period is an inadequate statement and fails to truly address the withdrawal's economic impacts.*

*The EA does not sufficiently explain the detrimental effect to Glamis mineral holdings in the area nor does it adequately address the loss of mineral development as a result of this withdrawal. The document understates the economic loss to the area as a result of the withdrawal.*

*Lack of knowledge and information is particularly evident in the summary dismissal of the inability to project gold prices. Even a superficial history of any of the gold mines in that area illustrates that the fluctuation in the commodity price is not an accurate means to project the viability of a gold mine. Indeed, the current price of gold is not the determinant of future profitability contrary to the proposed finding of no significant impact. The BLM's assertion of future economic viability typifies the inability of government to predict whether an enterprise will succeed. Public policy regarding mineral economics recognizes that self initiation by private companies is essential because government is incapable of making meaningful forecasts. The El Centro Office of BLM especially should recognize this failing because it was only 18 years ago when a federal agency issued a report with a similar conclusion that the area known as the mesquite mining district wasn't likely to produce any recordable mineral production. Subsequently as many as 350 local workers have been employed for almost two decades extracting three million ounces of gold from the Mesquite mine. The price of gold is an important consideration, but an informed analysis must recognize the fallibility of predicting the economic potential of this action solely on that basis. An appropriate EIS would not reasonably draw the specious conclusions made in this EA.*

**Response:** In the Mineral Report supporting BLM's analysis in the EA (Appendix A), BLM utilized a set standard for classification of public land mineral resources provided in BLM Manual 3031 (Energy and Mineral Resource Assessment). The standards are attached to the mineral report. These standards were developed under the authorities provided by the Mining and Mineral Policy Act of 1970 (30 U.S.C. 21a), National Materials and Minerals Policy, Research, and Development Act of 1980 (30 U.S.C. 1601), and most importantly, sections 102 and 201 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701, 1711) which requires the BLM to maintain an inventory of all public lands and their resources, and consider these resources in any decisionmaking process. In our mineral resource assessments, BLM considers all information in classifying public land. The gold price is but one factor that is considered. Others include current and historical interest in the area (number of mining claims), past or proposed development activity, the geologic and mineral environments that are known or inferred. It would be impractical for the BLM to assess value to lands simply because they have a low or undefined potential. We must consider such lands with no historical or current interest or development activity as having a low potential for development. This assessment is made in consideration of the interest, geology, and economics associated with development of gold resources within the region.

BLM's assessment of the area supports as a mineralization model, a low grade bulk disseminated deposit. Because of the geology of the area, BLM has classified through inference, those areas with Glamis' interest as possible containing this model of mineralization, supporting a moderate potential classification (refer to Appendix A of the EA). BLM's classification system in the appended mineral report supports the conclusion that no impacts would occur from withdrawal of the area except to those areas where development could not occur because land for necessary infrastructure would not be available.

As for the economics of the proposed Glamis Imperial Project, there will be no impact to Glamis' interests in the withdrawn area if the company's interests support valid existing rights. However, BLM has not made a determination with respect to the validity of any existing claims in the withdrawal area.

**Comment(s):** *The EA overstates the environmental effects caused by mining, because no consideration for required mitigation is provided for in the EA.*

**Response:** BLM recognizes the contribution and cooperation that many large and small mining companies and individuals have made to development of mineral resources on public lands, and their efforts to minimize impacts to sensitive non-mineral resources through mitigation measures. Although Glamis has attempted to devise mitigation measures responsive to the archaeological and cultural values within the Imperial Project, the impacts have been determined to be significant, even with mitigation (DEIS/EIR, pg. 4-87). The purpose of the withdrawal is to eliminate future appropriations of the land for mineral development, and ensure greater protection of Native American archaeological and cultural values from activities that would otherwise be permitted under the Federal mining laws.

### Recreation

Several commentors expressed concern that the withdrawal would close the lands to recreational and other public uses. Others questioned the value of a protective withdrawal if recreational use would be allowed to continue.

**Comment(s):** *There are too many areas that are being closed off to large numbers of the public for no good reason...If this land is withdrawn it will affect many who enjoy going out into the desert to hunt for rocks, hike, or just camp.*

*Who has access to this withdrawal area? If backpacking, horseback riding, etc., is allowed, where will the vehicle access or parking be located? How does BLM propose to ensure that recreational use of these lands will not damage the cultural resources that the withdrawal is trying to protect?*

**Response:** Mineral development under the 1872 Mining Law is the only land use that will be affected by the withdrawal. No changes to the recreational opportunities in the area would change as a result of the withdrawal.

BLM will protect cultural artifacts and resources on a case by case basis as determined necessary. Often archaeological and cultural resources are best preserved by the lack of attention drawn to them. Disturbance from vehicle use and camping can be minimized by enforcement of existing regulations, planning designations and policies. The CDCA Plan designated the Indian Pass area as Multiple Use Class L to protect sensitive, natural, scenic, ecological, and cultural resource values. The Plan further designated the area as a limited vehicle use area under the Motorized Vehicle Access Element. Limited vehicle access means that motorized vehicle access is allowed only on approved routes of travel. Camping is restricted to within 300 feet of these approved routes. Other protective measures include such methods as fencing, signing, barriers, education, increased law enforcement, etc.

### Conformance

This category included comments regarding conformance with the National Environmental Policy Act (NEPA), California Desert Conservation Area Plan (1980), the California Desert Protection Act (1994), local planning, and the U. S. Constitution.

**Comment(s):** *The level of analysis is insufficient to support the proposed action. The long history of planning and legislative actions has not supported withdrawal of these lands. Full analysis under NEPA through an EIS is needed to define the full extent of impacts and*

*alternatives, and to assess the consequences of circumventing past congressional policies and local government priorities.*

**Response:** BLM has determined that the Environmental Assessment fully analyzes all appropriate land use issues and that completion of an Environmental Impact Statement would not add significant knowledge or analysis to this proposed action. This determination is based on the rationale that the significance criteria, as defined by the Council on Environmental Quality (40 CFR 1508.27), have not been met.

**Comment(s):** *The EA does not explain to the reader that this proposed withdrawal would require an amendment to the CDCA plan. The protection of broad regional cultural features like the ones identified in this EA already are protected as a result of the CDCA and the 1994 CDPA. The EA does not even reference the 1994 CDPA Act in the assessment, although the 1994 legislation is a directly related action which must be considered by BLM.*

*Mining was recognized in the California Desert Protection Act (CDPA) as an allowable use with extraordinary controls. The CDPA greatly expanded the withdrawal process. Yet, in all instances this part of the Indian Pass area continued to be made available for mineral entry specifically to mine the gold resources defined in the pending mine operating plan. Development and use of these mineral resources remains a goal of the local government planning process.*

**Response:** The withdrawal is in conformance with the CDCA Plan and, therefore does not require a plan amendment, as explained in the Decision Record. The CDCA Plan provides general, regional guidance for management and protection of the public lands in the CDCA. The Plan calls for the management and protection of Native American values wherever prudent and feasible. Many impacts on resources of Native American value are not amenable to mitigation. Desecration of religiously significant sites cannot be mitigated as can many adverse effects on material resources. The general guidelines of the Desert Plan do not adequately insulate the land from a possessory use such as mining, which might jeopardize the continued integrity of the archaeological and cultural resources and result in an irrevocable loss of Native American religiously significant sites. The Plan acknowledges that substantial potential and often irreversible impacts on cultural values must be carefully considered in all actions and may require selective decisions.

**Comment(s):** *Imperial County has recognized the importance of mineral development in the county and has supported mineral development in this area for over 20 years.*

**Response:** Imperial County has no direct land use jurisdiction over public lands. However, the County's General Plan and zoning regulations were referenced in the EA to show the relationship of non-BLM plans and policies applicable to the proposed action. The proposed withdrawal is consistent with an area designated as "very sensitive" by the County's General Plan Conservation and Open Space Element Figure 4 (Sensitivity Map for Cultural Resources, pg. 19), and the County General Plan's goals and objective for "Preservation of Cultural Resources" (pg. 43). The Conservation and Open Space Element Existing Conditions and Trends (pg. 22, E. Minerals) recognizes that the two issues surrounding the extraction of minerals in Imperial County is land use conflicts and environmental impacts. Goal 5 for "Preservation of Mineral Resources" states that the County will identify and protect mineral resources for extraction and minimize the effect of mining on surrounding land uses and other environmental resources (pg. 44). The County has the difficult task of conserving environmental resources while encouraging economic development and growth, much like the BLM.

**Comment(s):** *The withdrawal constitutes an unlawful establishment of religion. BLM is prohibited under the U.S. Constitution from taking action based on such a clear motivation to promote and protect, and thereby endorse, religion. As the Ninth Circuit has explained, “[t]he Supreme Court has focused Establishment Clause analysis on whether governmental practice has the effect of endorsing religion.” In cases involving the Constitution’s Free Exercise Clause, the Supreme Court has held repeatedly that the First Amendment may not be asserted to deprive the public of its normal use of an area.*

**Response:** The Office of Legal Counsel in the Department of Justice has recently advised that the Federal government “has broad latitude to accommodate the use of sacred sites by federally recognized Indian tribes without violating the Establishment Clause of the First Amendment” (OLC Opinion, Memorandum for Bruce Babbitt Secretary of the Interior - Permissible Accommodation of Sacred Sites, September 18, 1996, p.1). The Supreme Court has held that the Establishment Clause generally prohibits the government from singling out religious organizations for special, preferred treatment whether in the form of a direct benefit or an exemption from a government requirement. At the same time, however, the Court “has long recognized that the government may (and sometime must) accommodate religious practices and that it may do so without violating the Establishment Clause” (Corporation of Presiding Bishop of Church of Jesus Christ of Latter-Day Saints v. Amos, 483 U.S. 327, 334 (1987) (quoting Hobbie v. Unemployment Appeals Comm’n of Fla., 480 U.S. 136, 144-45) (1987)).